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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,471	02/01/2002	Jerry S. Brown	83635	5963

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EXAMINER	
ANTHONY, JOSEPH DAVID	
ART UNIT	**PAPER NUMBER**
1714	

DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/057,471	BROWN, JERRY S.	
	Examiner	Art Unit	
	Joseph D. Anthony	1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 December 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *15,16,19 and 20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *15-16 and 19-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

FINAL REJECTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 15-16 and 19-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Independent claim 16 is indefinite in regards to the last two lines of the claim. The examiner suggests that applicant's delete the last two lines of the claim and insert therefor: –means for applying said chemical and biological warfare agent decontamination solution to a surface contaminated with a warfare agent.--.

Claims 15 and 19-20 are being rejected here because they are dependent on a rejected base claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Sanderson U.S. Patent Number 4,541,944.

Sanderson teaches peroxyacid generating compositions comprising hydrogen peroxide or a persalt, a bleach activator and surfactant(s) that are used in washing and disinfecting operations. Applicant's claims are deemed to be anticipated over Sanderson's '944, see the examples, such as examples 8, 11-20, 31-34 and 42-43 and column 16, lines 33-40. Also see column 17, line 64 to column 18, line 8.

Please note that the vessel that is used to contain Sanderson's said composition is deemed to inherently read on applicant's claimed "means for applying a solution to a contaminated surface", as set forth in independent claim 16. This is true since the vessel can be used in a number of different ways to apply the composition to a surface, such as by tipping the vessel so that its contents pores out through its opening onto the contaminated surface. The fact that the applied patent has no disclosure to using the vessel and its composition for applicant's intended purpose of decontamination a surface contaminated with a warfare agent is totally irrelevant, since applicant's invention is drawn to a kit and not a method of using the kit. It should be

clearly pointed out that applicant's claims give no specific features to the claimed kit that would or would not distinguish the kit from the said patent's vessel containing the patent's composition.

6. Claims 15-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Del Duca et al U.S. Patent Numbers (5,968,885 or 6,071,870).

Both Del Duca et al patents teach bleaching compositions in the form of emulsions and microemulsions. Applicant's claims are deemed to be anticipated over Del Duca et al '885, see examples V-VII. Also see column 11, line 62 to column 12, line 4. Applicant's claims are also deemed to be anticipated over Del Duca et al '870, see examples VIII-XI. Also see the abstract and column 10 and column 15. Also see column 11, lines 32-41.

Please note that the vessels that are used to contain Del Duca et al's said compositions are deemed to inherently read on applicant's claimed "means for applying a solution to a contaminated surface", as set forth in independent claim 16. This is true since the vessels can be used in a number of different ways to apply the composition to a surface, such as by tipping the vessel so that its contents pores out through its opening onto the contaminated surface. The fact that the applied patents have no disclosure to using the vessel and its composition for applicant's intended purpose of decontamination a surface contaminated with a warfare agent is totally irrelevant, since applicant's invention is drawn to a kit and not a method of using the kit. It should be clearly pointed out that applicant's claims give no specific features to the claimed kit that would or would not distinguish the kit from the said patents' vessels containing the patents' compositions.

7. Claims 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sanderson U.S. Patent Number 4,541,944 or Del Duca et al U.S. Patent Numbers (5,968,885 or 6,071,870). These patents have been described above and differs from applicant's claimed composition in that the references do not directly teach (i.e. by way of an example) compositions that contains applicant's specifically claimed component species. It would have been obvious to one having ordinary skill in the art to use the broad disclosure of the references as motivation to actually use applicant's claimed component species since such species are deemed to fall within the broad disclosure of solvents, surfactants, pH adjusting regulators (e.g. buffer), bleach components, and bleach activators, as set forth by the references.

8. Claims 15-16 are rejected under 35 U.S.C. 102(b) as anticipated by Scheuing et al. U.S. Patent Numbers 5,681,805 or 5,792,385.

Both Scheuing et al patents teach liquid peracid precursor colloidal dispersions and microemulsions. Applicant's claims are deemed to be anticipated over Scheuing et al's '385 Examples 9-11. Also see column 13, lines 29-42. Applicant's claims are also deemed to be anticipated over Scheuing et al's '805, see Examples 13-14. Also see claims 24-38.

Please note that the vessels that are used to contain Scheuing et al's said compositions are deemed to inherently read on applicant's claimed "means for applying a solution to a contaminated surface", as set forth in independent claim 16. This is true since the vessels can be used in a number of different ways to apply the composition to a surface, such as by tipping the vessel so that its contents pores out through its opening onto the contaminated surface. The fact

that the applied patents have no disclosure to using the vessel and its composition for applicant's intended purpose of decontamination a surface contaminated with a warfare agent is totally irrelevant, since applicant's invention is drawn to a kit and not a method of using the kit. It should be clearly pointed out that applicant's claims give no specific features to the claimed kit that would or would not distinguish the kit from the said patents' vessels containing the patents' compositions.

9. Claims 15-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Zhou et al. U.S. Patent Number 5,877,137 or Kott et al. U.S. Patent Number 6, 117,357 or Miracle et al. U.S. Patent Number 6,096,098.

Zhou et al teach liquid peracid precursor colloidal dispersions oil-core vesicles. Applicant's claims are deemed to be anticipated over Zhou et al's examples. Also see claims 1-14.

Kott et al teach unsymmetrical acylic imide bleach activators and compositions employing the same. Applicant's claims are deemed to be anticipated over Kott et al's examples, such as example XI. Also see claims 6-7.

Miracle et al teach asymmetrical bleach activators and compositions employing the same. Applicant's Claims are deemed to be anticipated over Miracle et al's examples, such as example IX. Also see claims 22-23.

Please note that the vessels that are used to contain Zhou et al's, Kott et al's and Miracle et al's said compositions are deemed to inherently read on applicant's claimed "means for applying a solution to a contaminated surface", as set forth in independent claim 16. This is true since the

vessels can be used in a number of different ways to apply the composition to a surface, such as by tipping the vessel so that its contents pores out through its opening onto the contaminated surface. The fact that the applied patents have no disclosure to using the vessel and its composition for applicant's intended purpose of decontamination a surface contaminated with a warfare agent is totally irrelevant, since applicant's invention is drawn to a kit and not a method of using the kit. It should be clearly pointed out that applicant's claims give no specific features to the claimed kit that would or would not distinguish the kit from the said patents' vessels containing the patents' composition.

10. Claims 15 and 16 are rejected under 35 U.S.C. 102(e) as anticipated by Choy et al. U.S. Patent Number 6,010,994.

Choy et al teach liquid compositions containing N-alkyl ammonium acetonitrile salts. Choy et al also teach liquid cleaning and/or bleaching compositions that contain said salts. Applicant's said claims are deemed to be anticipated over examples 3 and 5.

Please note that the vessel that is used to contain Choy et al's said composition is deemed to inherently read on applicant's claimed "means for applying a solution to a contaminated surface", as set forth in independent claim 16. This is true since the vessel can be used in a number of different ways to apply the composition to a surface, such as by tipping the vessel so that its contents pores out through its opening onto the contaminated surface. The fact that the applied patent has no disclosure to using the vessel and its composition for applicant's intended purpose of decontamination a surface contaminated with a warfare agent is totally irrelevant, since applicant's invention is drawn to a kit and not a method of using the kit. It should be

clearly pointed out that applicant's claims give no specific features to the claimed kit that would or would not distinguish the kit from the said patent's vessel containing the patent's composition.

11. Claims 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scheuing et al. U.S. Patent Numbers (5,792,385 or 5,681,805) or Scialla et al. U.S. Patent Numbers (6,099,587 or 5,997,585 or 5,900, 187) or Kott et al. U.S. Patent Number 6,117,357 or Miracle et al. U.S. Patent Number 6,096,098.

The two Scheuing et al patents, the three Scialla et al patents, the Kott et al patent, and the Miracle et al patent, have been described above and differ from applicant's claimed composition in that the following ways: 1) there is no direct teaching (i.e. by way of an example) to where a peroxycarboxylic acid compositions is produced by the reaction product of the peroxygen compound and bleach activator, and 2) the reference does not directly teach (i.e. by way of an example) a compositions that contains applicant's specifically claimed Component species, such as a buffer.

It would have been obvious to one having ordinary skill in the art to use the individual broad disclosures of the references as motivation to actually react the peroxygen compound with the bleach activator to make a peroxycarboxylic acid composition since such a reaction is the intended purpose the of taught compositions.

It would also have been obvious to one having ordinary skill in the art to use the individual broad disclosures of the references as motivation to actually

use applicant's claimed component species, such as a buffer or pH control agent, since such species/components are deemed to fall within the broad disclosure of solvents, surfactants, bleach components, buffers, and bleach activators, as set forth by the individual references.

Response to Arguments

12. Applicant's arguments filed 12/27/04 with the amendment have been fully considered but are not persuasive to put the application in condition for allowance for the reasons set forth above. Additional examiner comments are set forth below. Please note that although applicant has amended the claims to be limited to a "kit" such has not made the claimed kit patentable for the reasons clearly set forth above.

The following examiner comments were made in the previous office action in regards to the previously pending composition claims, and are repeated here because they are still deemed to be insightful in regards to the issues of the composition contained within applicant's claimed kit.

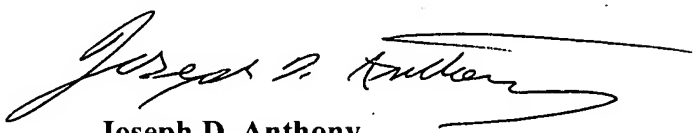
Applicant's main argument for patentability of the pending claims continues to be that wherein applicant's claimed invention is directed towards a chemical and biological warfare decontamination solution, the applied prior art solutions are directed to other intended uses, such as washing, bleaching, cleaning, and/or disinfecting. This argument of applicant, even if true, is irrelevant to the patentability of the pending claims. Applicant is reminded that many of applicant's claims are rejected as being anticipated over the solutions taught by the applied prior-art references. It is thus irrelevant what the prior-art intended use is for their taught solutions since they directly anticipate applicant's

claimed solutions. Furthermore, the courts have ruled numerous times that a novel intended use for an otherwise old or obvious composition does not render said composition patentably. Applicant claims are drawn to a solution and not to a method of use. If applicant's claims were drawn to a method of use then the disclosure of the applied prior-art patents in regards to their intended use would indeed be relevant.

In applicant's remarks on pages 7-8 of the preliminary amendment filed 09/13/04, applicant argues that decontamination solutions for chemical and biological warfare agents operate far better within an alkaline pH range instead of an acidic pH range. Applicant then argues that example IX of U.S. Patent Number 6,096,098 to Miracle et al teaches peroxide + activator bleaching formulations that have a pH of 4. While it is true that Miracle et al's example IX does have a pH of 4, many of Miracle's other examples have a different PH, which can be alkaline. Furthermore, applicant's attention is drawn to column 29, lines 39-45 wherein Miracle et al states: *"Liquid compositions according to the present invention may be formulated* ***acidic to deliver an in-use alkaline pH****. Low pH formulation is generally from about 2 to about 5 and preferably from about 2.5 to 4.5.* ***In-use pH is may range from about 7 to about 11, preferably from about 9.5 to about 10.5****"*. [Emphasis added]. Miracle et al. thus does not teach away from applicant's argued but not claimed alkaline pH, but rather teaches that an alkaline pH is the In-use pH of their taught peroxy + activator compositions. In any case, applicant's pending claims do not have any pH limitation or range.

Examiner Information

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Joseph D. Anthony whose telephone number is (571) 272-1117. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Vasu Jagannathan, can be reached on (571) 272-1119. The centralized FAX machine number is (703) 872-9306. All other papers received by FAX will be treated as Official communications and cannot be immediately handled by the Examiner.



Joseph D. Anthony
Primary Patent Examiner
Art Unit 1714

3/5/05